

DEFICIENCY PROGRESS REPORT – UPDATE 2

November 19, 2007

CUPA: CITY OF GILROY FIRE DEPARTMENT

Evaluation Date: October 12 and 13, 2005

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Status: Deficiency 1 remains outstanding.

Next Progress Report Due: None. See last comments to October 2007 update for deficiency #1.

1. **Deficiency:** The CUPA Summary Reports 2, 3, and 4 have not been submitted in a timely manner.

Preliminary Corrective Action by October 12, 2006: Summary Reports 2, 3, and 4 are due September 30th of each year. The reports need to be completed and mailed, faxed, or emailed to Cal/EPA by the due date as required.

CUPA Corrective Action (April 4, 2007): See attached reports for 2005-2006, note that all of the applicable fields have been completed (see attachment A).

Cal/EPA Comments to April 4, 2007, Corrective Action: Cal/EPA appreciates the CUPA's submittal of their Annual Summary Reports 2, 3, and 4 for fiscal year 2005-2006; however, these reports were submitted on March 26, 2007, nearly six months after the deadline. Therefore, this deficiency remains outstanding. If the CUPA is able to submit their next Annual Summary Reports by September 30, 2007, then this deficiency will be considered corrected. On the next status report, due on **July 3, 2007**, please submit a written plan to ensure adherence to submittal of all required and requested reports by the deadline.

CUPA Corrective Action (October 24, 2007): These [Annual Summary Reports 2, 3, and 4] will be submitted on or before the September 30th deadline.

Cal/EPA Comments to October 24, 2007, Corrective Action: *The CUPA submitted the FY 06/07 Annual Summary Reports to Cal/EPA on October 24, 2007, which was the day of the CUPA's 2007 evaluation. Therefore, this deficiency remains outstanding. This deficiency has been incorporated into the CUPA's 2007 Evaluation Summary of Findings. The CUPA is requested to work with and update the 2007 evaluation team in correcting this deficiency.*

2. **Deficiency:** The CUPA's last two Summary Reports 03/04 and 04/05 showed they had left the Single Fee amount billed box blank. This box needs to be filled out to incorporate that information, which is due and reportable to Cal/EPA as the amount billed by the CUPA. The rate of collection will need to be compared to the rate of billing to show accountability of funds received.

Preliminary Corrective Action by October 12, 2006: The Summary Reports need to have the amount billed for Single Fee, UST, and Surcharge Totals boxes filled in. The CUPA will need to check with its staff inspectors who are each keeping track of this information, and find a way to maintain this information in a database for access.

CUPA Corrective Action (April 4, 2007): Information has been supplied into the data fields of report 2. All report fields will be completed based on best available data (refer to attachment A).

Cal/EPA Comments to April 4, 2007, Corrective Action: *All of the information requested has been entered on the CUPA's Annual Single Fee Summary Report 2 for fiscal year 2005-2006. Therefore, this deficiency has been satisfactorily corrected; no further update is required. As a reminder, all information on the Annual CUPA-to-State Summary Reports must be complete and as accurate as possible; if the field does not apply to the CUPA, then enter "NA."*

3. **Deficiency:** The CUPA self audits are not complete, they do not cover all aspects required of the self audit. An element missing is: A report of deficiencies and a corrective plan of action for correction of all program elements.

Preliminary Corrective Action by October 12, 2006: During the next self audit, incorporate a heading for the report of deficiencies and a corrective plan for any deficiencies within all programs.

CUPA Corrective Action (April 4, 2007): Both the *CERTIFIED UNIFIED PROGRAM AGENCY SELF AUDIT GUIDANCE DOCUMENT* and the *Draft UNIFIED PROGRAM CUPA EVALUATION CHECKLIST* contain

sections for deficiencies and timelines for corrective actions. Both of these forms are completed during the Self Audit and copies are maintained. It is uncertain as to why a third report document would need to be created for the purpose of the self audit. It is proposed that the deficiency sections that are part of these checklists (which are both used in our self audit process) meet the requirements of consisting of a report of deficiencies and corrective action (see attachment B).

Cal/EPA Comments to April 4, 2007, Corrective Action: *This deficiency remains outstanding. Checklists such as the CUPA self-audit guidance and that provided in the CUPA program evaluation document are great references and tools to determine whether or not all required elements are included. Based on the self-audit requirements in CCR, Title 27, Section 15280, however, narrative summaries are requested for nearly all self-audit elements. Thus, using a "yes or no" checklist alone does not satisfy the self-audit requirements. According to the CUPA's 2005 Summary of Findings, the self-audits that were submitted to Cal/EPA were missing a specific element, which was a report of identified deficiencies with the plan(s) toward correcting all deficiencies (see CCR, Title 27, Section 15280(b)(1)(A)). Therefore, this deficiency remains outstanding. The CUPA is encouraged to review the regulations on self-audit requirements. On the next status report, due on **July 3, 2007**, the CUPA is requested to submit their self-audit for the previous fiscal year 2005-2006. This deficiency will be considered corrected upon receipt of the previous fiscal year's self-audit with **all** required elements in appropriate narrative summary or report format. Cal/EPA will provide the CUPA with examples of complete self-audits.*

CUPA Corrective Action (October 24, 2007): See attached CUPA Self Audit Forms that are intended to meet the requirements.

Cal/EPA Comments to October 24, 2007, Corrective Action: *The CUPA has satisfactorily corrected this deficiency. No further update is requested.*

4. **Deficiency:** CUPA's UNIDOC template for the **Emergency Response Plans and Procedures Title 19, Chapter. 4, Section 2731** is missing; (c) mitigation, prevention, or abatement of hazards to persons, property, or the environment

Preliminary Corrective Action: Add this to the Emergency Response/Contingency Plan Section.

CUPA Corrective Action (April 4, 2007): [Gilroy City CUPA had] added language to [the Unidoc template] form during [the CUPA's] audit [on October 13, 2005]. No attachment [is] submitted [at this time].

Cal/EPA Comments to April 4, 2007, Corrective Action: *This deficiency was corrected at the time of the evaluation; therefore, no further update is required for this deficiency.*

5. **Deficiency:** The CUPA has no Cal ARP Dispute Resolution process as defined in **Title 19, Chapter 4, Section 2780.1**

Preliminary Corrective Action: Include the CalARP Dispute Resolution Process (Section 2780.1) in the City of Gilroy Policies and Procedures.

CUPA Corrective Action (April 4, 2007): [Gilroy City CUPA had] added a Section to the Inspection and Enforcement Program Policy and Procedure for handling Dispute Resolution for CAL/ARP sites (See attachment C).

Cal/EPA Comments to April 4, 2007, Corrective Action: *This deficiency was corrected at the time of the evaluation; therefore, no further update is required for this deficiency.*

6. **Deficiency:** The CUPA is not always citing violations in a manner consistent with the definitions of Minor, Class II, or Class I as provided in statute and regulation.

Preliminary Corrective Action by November 12, 2005: The CUPA shall provide training to their staff regarding proper classification of violations. Supervisor shall review the violations before they are entered into the data base system to ensure consistency.

CUPA Corrective Action (April 4, 2007): A full day on-site training session was provided by DTSC staffer Mickey Pierce on November 1, 2005 to cover tiered permitting and generator violations. (Certificates were generated by the CUPA and signed by Mickey Pierce) – see attachment D.

Cal/EPA & DTSC Comments to April 4, 2007, Corrective Action: *The preliminary corrective action provided in the 2005 Summary of Findings consisted of two actions to be taken by the CUPA to ensure that violation classification was being undertaken and overseen. The CUPA has addressed the first action by providing training, but has not addressed how the CUPA management will audit or oversee the classification to ensure*

*that the information provided by the training is being implemented. Please provide this information in the next status report due on **July 3, 2007**.*

CUPA Corrective Action (October 24, 2007): Staff have been instructed to pay particular attention to the use of the state definitions for citing violations on inspection forms. These definitions and methods of citation are included in our enforcement policy and procedures document (attached).

Cal/EPA Comments to October 24, 2007, Corrective Action: *This deficiency has been satisfactorily corrected; no further update is required.*

7. **Deficiency:** The CUPA is not always leaving a Notice to Comply for minor violations at the conclusion of the inspection. State statutes require the inspector to leave a Notice to Comply identifying the Minor hazardous waste violations and corrective measures at the conclusion of the inspection.

Preliminary Corrective Action effective immediately: The CUPA shall change their practice of issuing the Notice to Comply by mail. The narrative page shall be used to identify the violation and the corrective measure; this information shall be left with the facility at the conclusion of the inspection.

CUPA Corrective Action (April 4, 2007): The Hazardous Waste Generator Inspection Report Form, Summary Inspection form and Narrative Page forms are used as the written method of alleging a minor violation is in existence. Pursuant to [HSC, Chapter 6.5, Section] 25117.9 they are completed during the course of conducting an inspection of a facility by a Gilroy CUPA Program Inspector. These forms are presented to a person who is an owner or employee of the facility being inspected at the time that the inspection forms are completed, and they state the nature of the alleged minor violation(s), and provides direction on how to come into compliance with the requirements, and includes a time limit in which to comply that does not exceed 30 days. This method for issuing a notice to comply contains all of the information specified in subdivision (h) of Section 25187.8 with regard to inspection of the facility. The mailed notice to comply referred to in the audit report, is a separate follow-up notice generated by the inspection software and used a facility exceeds its compliance due dates or fails to comply. This is document while it too meets the requirements of Section 25187.8 is a secondary notice (See attachment E).

Cal/EPA & DTSC Comments to April 4, 2007, Corrective Action:

DTSC accepts the CUPA's response as sufficient to address this deficiency. No further update is required.

- 8. Deficiency:** The CUPA is not collecting the annual PBR notification forms and acknowledging/authorizing in writing the PBR treatment

Preliminary Corrective Action by October 28, 2005: The CUPA shall immediately collect a completed PBR notification form from Won Ik Quartz and ensure that future annual notifications are submitted on time. The CUPA shall update their Tiered Permitting procedures to include the annual receipt, review, and acknowledgement/authorization in writing of annual PBR notification form submittals.

CUPA Corrective Action (April 4, 2007): The annual tiered permit notification forms were collected for 2001, 2003, 2004 and 2005 for Won IC Quartz (see attached). An additional letter of authorization procedure has been added to the tiered permit policy and procedures so that a letter of authorization will be generated in addition to the cover page of the CUPA permit document which only identified the tiered permit status of a facility and not the specific tiered unit information. Since the [Won Ik Quartz] facility closed in September of 2005 no authorization letter was issued. However a closure process was undertaken and recently completed in conformance with Health and Safety Code (See attachment F).

Cal/EPA & DTSC Comments to April 4, 2007, Corrective Action:

DTSC accepts the CUPA's response as sufficient to address this deficiency. No further update is required.

- 9. Deficiency:** The UST Operating Permit does not describe all of the monitoring requirements of the UST system.

Preliminary Corrective Action by December 12, 2005: Revise the Permit to Operate to include identification of the method of monitoring used for the piping and UDC, etc.

CUPA Corrective Action (April 4, 2007): The UST Operating Permit now includes a complete UST system monitoring description for each tank (See attachment G).

Cal/EPA & SWRCB Comments to April 4, 2007, Corrective Action:

The CUPA's sample Permit to Operate still does not encompass all of the monitoring requirements for an underground tank system. Therefore, this deficiency remains outstanding. While the CUPA's sample UST Permit to

*Operate covers monitoring requirements for the tank only, it does not cover monitoring requirements for the piping, under-dispenser containment, etc. Additionally, although the CUPA's permit application requests information on piping and other monitoring requirements for the UST system(s), the permit application does not satisfy the monitoring requirements requested to be identified on the Permit to Operate. On the next status update due on **July 3, 2007**, the CUPA is requested to submit a revised UST operating permit that includes all monitoring requirements for the entire UST system. The CUPA will be provided with examples of complete Permits to Operate. The CUPA may retain the existing permit conditions as part of the revised permit. In addition, Cal/EPA and SWRCB strongly recommend that the CUPA adopt the current version of the UPCF tank application forms, which are available for download from the Cal/EPA Unified Program, Unidocs, or Cal-CUPA Forum web site.*

CUPA Corrective Action (October 24, 2007): The CUPA DMS program has been upgraded to print out the monitoring requirements as required.

Cal/EPA Comments to October 24, 2007, Corrective Action: *This deficiency has been satisfactorily corrected; no further update is necessary.*